IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 82 of 2005

For Approval and Signature:

THE HON'BLE MISS JUSTICE R.M.DOSHIT

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

CHANDANBEN LALITKUMAR GARDI - Petitioner(s)

Versus

AMRUTLAL RAVJIBHAI KACCHHADIA - Respondent(s)

==========

Appearance :

MR JT TRIVEDI for Petitioner No(s).: 1.

MR AS SUPEHIA for Respondent No(s).: 1.

==========

CORAM :THE HON'BLE MISS JUSTICE R.M.DOSHIT

Date : 27/06/2005

ORAL JUDGMENT

RULE returnable today.

Learned advocate Mr.Supehia waives service of rule.

Both the learned advocates agree that the matter be heard and decided today.

Feeling aggrieved by the judgment and order dated 10th March, 2005 passed by the learned Joint District Judge, Junagadh in Regular Civil Appeal No.79/2004, the petitioner-plaintiff has preferred the present Revision Application under Section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as, "**the Rent Act**").

The petitioner-plaintiff had instituted Regular Civil Suit No.411/1997 in the Court of Civil Judge (S.D.), Junagadh for recovery of possession of the suit premises on the grounds that the respondent-defendant was tenant in default; that he was not ready and willing to pay the rent; that the plaintiff required the suit premises reasonably and bonafide for his personal use and that the defendant had not used the suit premises for six months and more without reasonable cause. The suit was decreed in favour of the plaintiff by judgment and order dated 25th August, 2004. The said judgment was challenged by the defendant in aforesaid Regular Civil Appeal No.79/2004.

The Appeal has been allowed by the learned Joint District Judge on a limited issue. The learned Judge was of the opinion that though the defendant had specifically raised the dispute as to the standard rent of the suit premises, the trial Court did not frame suitable issue in this connection nor did it record its finding on such issue. The learned Judge, therefore, held that, "...**Therefore, without entering into the merits of the case that the defendant is entitled to get protection under Section 12(3)(b) of the Act or not, or that the case is falling under Section 12(3)(a) of the Act, I am of the view that this matter is required to be remanded back for decision of the issue of standard rent. Unless and until the standard rent dispute is decided, no decision can be taken even for recovery of arrears of rent. Thus, I frame the following issues for decision by the trial Court :- (1) What should be the standard rent of the disputed shop ? (2) What order and decree ?**" Keeping other issues in abeyance the learned Judge has remanded the matter to the trial Court for decision on the above referred issues after allowing the parties to lead oral as well as documentary evidence.

Mr.Trivedi has submitted that the lower appellate Court has erred in remanding the matter to the trial Court on limited issue. He has submitted that the learned trial Judge had categorically observed that the dispute as to the standard rent was not bonafide. The lower appellate Court ought to have decided the matter on evidence on record. He has relied upon the judgment of the Hon'ble Supreme Court in the matter of **Bhairab Chandra Nandan v/s. Ranadhir Chandra Dutta** [AIR 1988 SC 396].

I do agree with Mr.Trivedi. As to the standard rent, the learned trial Judge observed that the defendant had not raised the dispute as to the standard rent within one month from the date of the receipt of the suit notice. The learned Judge further observed that, "**the dispute of standard rent is not bonafide." "Though the defendant has deposed that the standard rent of the suit shop is Rs.20/-, but the defendant has not led any oral or documentary evidence or has not applied for fixation of standard rent."** Thus though the learned trial Judge did

not frame a specific issue the parties to the suit were alive to the matter in dispute and had led evidence. Thus, right or wrong the issue as to the standard rent was decided by the learned trial Judge as aforesaid. The lower appellate Court, therefore, ought to have decided the Appeal on merits on all issues on evidence on record. By the impugned order the lower appellate Court has given opportunity to the defendant to lead further evidence to fill-in the lacunae.

In view of the above discussion the Civil Revision Application is allowed. The impugned judgement and order dated 10th March, 2005 passed by the learned Joint District Judge, Junagadh in Regular Civil Appeal No.79/2004 is quashed and set-aside. The Appeal is remanded to the lower appellate Court for hearing and decision on merits on all issues. Rule is made absolute. There shall be no order as to cost.

(**Ms. R.M.Doshit, J.**)

/moin